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Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In re Applications of)

Howard B. Dolgoff)

Mark and Renee Carter)

For Construction Permit for a New)
FM Station on Channel 292A in)
Miramar Beach, Florida)

MM Docket No. 93-178

File No. BPH-911223ME

File No. BPH-911224MD

To: Administrative Law Judge
John M. FrysiaakCONSOLIDATED REPLY TO OPPOSITIONS

Applicants Mark and Renee Carter ("the Carters"), by their attorneys, hereby respectfully reply, on a consolidated basis, to Howard B. Dolgoff's ("Dolgoff's") Opposition to Contingent Motion for Enlargement of Issues and Opposition to Countermotion to For Summary Decision, both filed on August 10, 1993. The Carters also herein reply to the Mass Media Bureau's Opposition to Contingent Motion to Enlarge Issues, likewise filed on August 10, 1993.

Withdrawal of site issue request, and related pleading.

The Carters hereby withdraw their request for addition of a site availability issue against Dolgoff, one of the issue requests contained in their Contingent Motion for Enlargement of Issues filed herein on July 26, 1993. They likewise withdraw their Opposition to (Dolgoff's) Partial Motion for Summary Decision and Countermotion for Summary Decision filed on the same date.

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Until receipt of Dolgoff's Opposition dated August 10, the Carters were confident, based on assumed identity of actual roads with roads depicted on maps of the Mack Bayou area adduced in this proceeding, and on the conclusion of the Property Assessor by certificate dated July 22, 1993, that Dolgoff had specified a site different from the one as to which he certified availability. They were, in fact, surprised when Dolgoff did not concede the point and thereupon undertook to check the location on the ground of roads previously assumed to correspond to those depicted on the maps. It was then discovered that the actual roads in the Mack Bayou area do not correspond in location to roads depicted on the maps, and for this reason the Carters have lost confidence in their position heretofore taken.

The Carters do not withdraw, however, but persist in their requests for a hearing issue inquiring into the hard-look violation that they believe to be involved in Dolgoff's application as amended, and for issues respecting Dolgoff's EEO and nondisclosure violations.

Hard-Look Issue. It bears pointing out again that the position taken herein by the Mass Media Bureau, that Dolgoff's directionalized proposal was acceptable under the grandfathering provisions of Section 73.213 even though it lacked any study or depiction of the pertinent contours of the station it purported to protect (with the result that the Mass Media Bureau itself had to conduct the necessary study and prepare a depiction of the pertinent contours), is on its face a surprising and anomalous

one never passed on by the Commission. Certainly no provision of the rules authorizes what the Bureau characterizes only as its "practice." In fact Section 73.213 does not contemplate directionalized grandfathering proposals at all. Thus, the position taken herein by the Carters -- that directionalized grandfathering proposals, if allowed, must meet the requirements Section 73.215 apparently applicable to all directionalize FM proposals -- is the more natural, and sensible reading of the rules and certainly, in view of the norm of requiring applicants to demonstrate the feasibility of their own proposals, is a reasonable one that the Commission might well adopt.


It remains the Carters' view, therefore, as stated in their motion, that a hearing record should be developed so that the Commission will not, if it disagrees with the staff, be required to send this matter back for further hearing proceedings.

EEO and Nondisclosure Issue. Dolgoff's arguments regarding the res judicata effect of the Commission's findings and conclusions respecting his "willful and repeated violations" of its EEO rules in Letter to Howard B. Dolgoff, 5 FCC Rcd 7695 (1990), do not serve to diminish, but rather to heighten his reporting responsibility in this comparative proceeding, wherein his broadcast experience and broadcast record will be in issue and may well be of decisional significance. His motive not to disclose his violations, with the hope that they would not surface in this comparative proceeding, is patent. His argument

in footnote 6, at. page 24 of the opposition, that no specific question on FCC Form 301 requires disclosure by a principal of a corporate licensee found guilty of a Commission rule violation, is of no help. Dolgoff was not just any principal of Dolcom Broadcasting, Inc., the licensee; he was the General Manager and 40% stockholder, i.e., the natural person legally and in fact responsible for the "willful and repeated violations" in question.

Wherefore, it is respectfully requested that the hard-look and EEO and nondisclosure issues heretofore requested be added.

Respectfully submitted,


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CERTIFICATE OF SERVICE

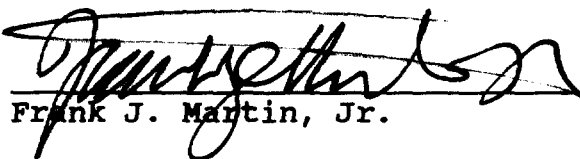
I hereby certify that on this 25th day of August, 1993,
a copy of the foregoing Consolidated Reply to Oppositions has
been served by U.S. mail, postage paid, upon the following:

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